GOVERNMENT

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BY

GEORGE F. HOAR.

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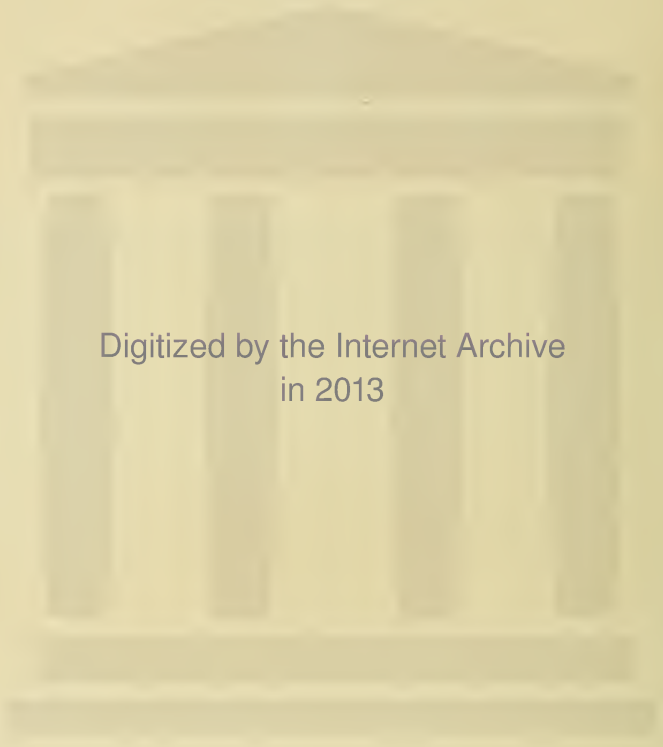

GOVERNMENT IN CANADA AND THE UNITED STATES COMPARED.

The history of the relation between Canada and the United States, from a time preceding the War of Independence until to-day, affords a remarkable instance how little the relations of communities with each other are determined by their interests or by mere reason. The desire of our statesmen at the time of the Revolution that Canada should join with us in throwing off the yoke of Great Britain, and that she should become a part of our confederacy, is well known. Undoubtedly a like desire has possessed the great body of the American people ever since. It would have seemed that everything in the condition and interest of Canada would have promoted the accomplishment of this desire. Along her whole border, now extending for more than 4,000 miles, the physical conditions are such as tend to union rather than to separation. Nature seems to have designed her several provinces for union with the United States, if not for separation from each other. Canada had been brought under the authority of England but twelve years before our Revolution, by conquest. Her people were descended from England's hereditary rival and foe. Language, interest, religion, history, tradition, the memories of wars going back to the earliest days of the civilization of the two countries, would seem to have made it impossible that the French Catholics of England's North American provinces would ever abide content under the British yoke. Yet England never had a colony so obedient and so tranquil.

The question of our relations with Canada is now pressing upon the American people as never before. Every Canadian engaged in productive or profitable industry, whether a farmer, miner, manufacturer, lumberman, or fisherman, is either a customer, a source of supply, or a competitor of some American. The Canadian lines of railroads, which now cross the continent, which have been constructed at a cost of more than £120,000,000 sterling, originally intended to be competitors with the railroads of America as well as military roads, have become largely tributary to the United States, are building up American cities at the expense of those of Canada, and enable New England and the Northwest to hold their own in the rivalry between them and the communities of the Middle States and the South. Out of the present condition of things there has come such large advantage to us that the stream of emigration from Canada to the United States is probably at this time larger than from any other country in the world in proportion to the capacity of the fountain. More than one million Canadians are now upon American soil. They are among the most energetic and valuable of that people. There are regions in Canada which have been abandoned by all their young men, who have sought occupation here. I was told of a single township where, on a voting-list made up two years ago, there were two hundred and eighty-six names, sixty-six of whom within that time have come to this country. The historical scholars of the United States may, therefore, well deem it as much within their province to make their countrymen familiar with the history, traditions and institutions of Canada, as if it were already embraced within the Union itself.

It is the purpose of this essay to give a brief outline of the Constitution of Canada, to show what portion of it has been derived from the United States, and what portion of it is of British origin. This will be done without an attempt to bring to light any historical fact not generally known, or

to add anything new to information now readily accessible, but only in the hope that it will tend to stimulate the interest which American scholars already feel in the engaging subject of Canadian history and institutions, around which the genius of Parkman has already thrown so resplendent a light.

The term Canada throughout this essay will be applied to all the territory of North America lying north of the United States (of course not reckoning Alaska), together with the adjacent islands which are subject to Great Britain, although Newfoundland and Labrador are not included in the political organization known as the Dominion of Canada.

This domain, as has been said, borders upon our own for more than 4,000 miles. It contains 3,610,000 square miles, or, excluding water surface, 3,470,257 square miles. It is connected politically with the power which is our principal manufacturing and commercial rival in peace, and which would be most formidable to us as an antagonist in war. Its institutions are largely modeled upon our own, and, where they differ from our own, afford a field of interesting and profitable study. The two countries have in general the same language, similar laws and a common literature.

Canada, though in theory and in fact, dependent on the Parliament of Great Britain for her constitutional and legal rights, is, in a large degree, a self-governing people. Her system of government is copied, in many of its features, from that of the United States. In others, she follows the methods of Great Britain. Since the conquest of Canada from the French, which was followed by the Convention signed September 8, 1760, her dependence on Great Britain has been unquestioned. Various powers and privileges of self-government have been conferred on her from time to time. But these came from the bounty and grace of the power to which she was subject, and were not asserted as birthrights, as was the case with the United States.

The Act of Parliament of March 29, 1867, known and

cited as the British North America Act, united the Provinces of Canada, Nova Scotia and New Brunswick under the name of the Dominion of Canada, provided constitutions of government for the Dominion and the several Provinces, and prescribed the conditions under which Newfoundland, Prince Edward Island, British Columbia, Rupert's Land and the Northwest Territory might thereafter be admitted to the confederacy or union so created.

Since 1867, all the British possessions on the continent of North America to the north of the United States, and all the islands adjacent to such possessions, except Newfoundland and Labrador, have been included within the Dominion of Canada.

The Constitution of the Dominion has taken from the United States her modification of the federative principle. Like the United States, Canada has local government in the different provinces, and a general federal government with authority over the entire Dominion, whose jurisdiction depends upon the subject-matter, and not upon local boundaries, and whose legislative, executive and judicial powers operate directly upon the citizen. As in the United States, the central and the local powers are kept each within its own domain by the authority of a supreme judiciary.

While many things which we think essential to self-government and to the due security of personal and individual rights are not enjoyed by the people of Canada, in one most important respect the will of her people takes effect in legislation more directly and effectively than does that of the people of the United States. The British North America Act was passed after our Civil War. Its authors conceived that they had so thoroughly studied our system as to be able to avoid its defects. The theory of the Constitution of Canada, if that term may properly be applied to an act of legislation which may be at any time revoked or altered at the pleasure of the Legislature which enacted it, is that the power of the Queen and Parliament of Great Britain over Canada is sov-

ereign and unlimited. The people of the United States, or of the colonies which now form part of the United States, never recognized such authority in Great Britain, and do not admit the existence of unlimited powers of government over them to be vested anywhere. The British North America Act of 1867 is not strictly a constitution amendable only by the people, or even a charter, operating as a grant of political power which can only be forfeited by judicial decision, or surrendered by the people whom it affects. It has no higher authority than any other act of ordinary legislation. It is probable that the desire of Great Britain to retain the allegiance of her dependencies, and the lesson that power has learnt from her conflict with the people of the territories now composing a large part of the United States, render the liberty of Canada practically secure against any domination of Parliamentary authority or imperial encroachment of any kind. But, legally and theoretically, Canada, in respect of her liberties, is but a tenant at the will of Great Britain. In the United States, all powers not granted to Congress are reserved to the States or the people. In Canada, all powers granted to the Provinces are subject to the Dominion or to Great Britain. She has, moreover, no Bill of Rights. The doctrine which lies at the foundation of every American system of government, state or national, that there are domains upon which no human authority can be permitted to enter, and acts which no human power shall be permitted to do, is unknown to her.

In her foreign relations, Canada is wholly under British control. She has no voice in the treaty-making power, or in making war or peace. Any wise administration in Great Britain would doubtless consult Canadian statesmen in making a treaty, and would give her, when convenient, a representation in the negotiation, where Canadian interests were specially affected. In several very important cases recently she has been so consulted. But the final authority is that of Great Britain. She may plunge Canada in war against her

interest, her wishes, even her honor; or may seriously injure her by treaties with other nations in peace. Great Britain has just rejected an arrangement which Newfoundland desired with the United States in consequence of the remonstrance of the Dominion.

The veto power, if kept in force in practice according to the letter of the provisions of the British North America Act, not only leaves little of the local self-government to the Provinces, but is a most serious restraint upon the popular will in federal or general legislation. This power whenever exerted is absolute. No legislative body, however large the majority or entire the unanimity, can pass a bill over the veto. The pardoning power for the Provinces, as well as for the Dominion, is vested in the Governor-General.

In each Province the chief executive power is vested in a Lieutenant-Governor, who is appointed by the Governor-General in Council, and whose salary is fixed and provided by the Parliament of Canada. Every bill passed by the legislature of a Province must be presented to the Lieutenant-Governor, who may either assent to it, withhold assent to it, or reserve it for the consideration of the Governor-General. If he withhold assent, the bill fails to become a law. If he assent, it may be disallowed by the Governor-General at any time within one year. If he reserve it, it does not become a law unless the Governor-General assent within one year.

In the same way all acts passed by the Parliament of the Dominion may be assented to by the Governor-General in the Queen's name, may be reserved for the royal pleasure, or the Governor-General may declare that he withholds the royal assent. In the first case the act becomes law. In the second, it fails to become law, unless assented to by the Queen within one year. In the last case, it is defeated.

Further, bills for appropriating any part of the public revenue, or for imposing any tax or impost, must, if in the

Dominion Parliament, originate in the House of Commons, and if in the legislature of a Province, in the popular branch. No such measure can be adopted or passed in either, unless it has first been recommended by the Governor-General or Lieutenant-Governor in the session at which it has passed.

The Senate of the Dominion Parliament is composed of Senators, originally not exceeding seventy-eight in number, now limited to eighty-two, who are required to have a property qualification, and who are appointed by the Governor-General for life. The Speaker of the Senate is appointed by the Governor-General, and is removable by him. The Constitution of the legislative bodies of the Provinces is not uniform. In Ontario, the Legislature consists of the Lieutenant-Governor and one House. In Quebec, there are two Houses. The Senate is composed of twenty-four persons, who are appointed by the Lieutenant-Governor for life, until the Legislature shall otherwise provide. In Nova Scotia and New Brunswick, there are two Houses, the members of one of which are appointed for life by the Lieutenant-Governor. In Prince Edward Island, there are two Houses, both elected. In Manitoba and British Columbia, there is but one House.

The judges of the principal courts of the several Provinces, as well as of the Dominion, are appointed by the Governor-General. Their salaries are fixed and maintained by the Parliament of the Dominion, and are entirely subject to its control.

The Queen is declared to be a part of the Dominion Parliament.

The executive power of the Dominion is vested in the Queen, who exercises it through the Governor-General, whom she appoints and removes at pleasure. His salary, now fixed at £10,000, cannot be reduced without his consent. He appoints the principal executive officers for the Dominion. In the Provinces these officers are appointed by the Lieutenant-Governor.

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It will be seen that, according to the scheme of the Canadian Government, the authority of the Dominion controls and restricts that of the Province at every point. The authority of the Queen controls and restricts that of the Dominion at every point. No law involving raising or expending money can be introduced except on the recommendation of the Governor-General appointed by the Queen, or passed without the concurrence of the Senate, appointed by her representative, or go into effect until approved by her representative, or by herself in Council. Canada can neither raise a penny nor spend a penny unless the Government propose the tax or the expenditure. No people claiming to be self-governed were ever placed in so tight a constitutional straight-jacket before. But in practice the popular control over legislation is secured in another way resembling that of Great Britain. Canada has avoided the restraints which exist in the Constitution of the United States, which fetter the immediate action of the popular will, and make a change of legislative policy so difficult here. In the United States the executive power can change but once in four years. The veto power is vested in the President, which can be overcome only by a two-thirds vote in each legislative chamber. The legislative power can be transferred from one party to another only when the majority in each House has been changed. It frequently happens, as was the case during the whole period from 1875 to 1889, that the United States is without the possibility of national legislation, except in the case where the two political parties into which the nation is divided are agreed. So with regard to foreign relations. Treaties can be made only with the concurrence of two-thirds of the Senate. Ordinarily, therefore, no treaty can ever be made without the concurrence of two parties into which the country is divided.

On the other hand, the Government of Canada is carried on by a Ministry, appointed indeed by the Governor-General, but responsible to the House of Commons, and chang-

ing when the majority in that House changes. In this respect the English system prevails there.

It is sometimes claimed that the veto power of the Queen over the Acts of the Dominion Parliament, like that of the Queen in Great Britain, which has been obsolete since 1704, is a power never again to be used. Mr. Bourinot expressed this view in his paper read before the American Historical Association. But it is difficult to believe that Great Britain would treat a great constitutional power as obsolete, which was expressly reserved in a scheme of government enacted in 1867, and which has been exercised since that time.

Both parties in Canada have laid it down in their platforms that the veto power should not be exercised by the Dominion authority over Provincial legislation "in case of acts clearly and unequivocally within the legal and constitutional powers of the Province." Mr. Bourinot admits that there is a latent peril in this power, even so restrained, in times of excitement, and that it would have been better to leave it, as we do, to the Courts.

We suppose the veto power reserved to the Queen in Council would be exercised only where such veto seemed to her advisers in England necessary for the preservation of the royal authority, or the existing constitutional relation of Canada to the Empire. The veto power reserved to the Governor-General, or to the Lieutenant-Governors in the Provinces, is, we suppose, a living and real power. There were forty-five cases of disallowances of Provincial acts between 1867 and 1887. The power seems so far to have been exercised with great caution and discretion.

Another practice, also, has grown up under which Provincial acts are commented on, that is, the Minister of Justice, acting for the Governor-in-Council, has pointed out to the Provincial Government the particulars wherein certain measures are objectionable. In such cases, they have been amended or abandoned.

Provincial Acts are disallowed on three grounds, viz. :—

As not within the power of the Provincial legislatures;

As in conflict with Federal legislation;

As prejudicial to the advantage of the Dominion as a whole.

The latter ground would include the objection that the act was in violation of common right.

As the Governor-General in exercising this power is governed by the advice of the Ministry, who are the political leaders of the majority in the Dominion House of Commons, these vetoes are likely, in many cases, to be regarded by the opposition as political, especially if the vetoed measure were introduced by the governing party in the Province, being opposed to that of the Dominion.

The power vested in the Governor-General to reserve acts of the Dominion Parliament has been exercised in a few instances. An example is the Copyright Act of 1872, where the Royal assent was refused.

The Governor-General is instructed so to reserve measures which in his judgment are inconsistent with Great Britain's treaty obligations, which prejudice the rights of British subjects outside Canada, or which strike at the Queen's supremacy, and, perhaps, others where like objections exist.

The preamble to the British North America Act recites that "the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their desire to be federally united with the Dominion under the crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom." The essential resemblance of the Canadian constitution to that of Great Britain, and its essential difference from that of the United States, is shown by the fact that the administration is responsible to the House of Commons, and the Ministry must resign if they cease to be in accord with that majority. The appointment of all judges and senators, and of the

Speaker of the Senate and all executive officers, the allowance or disallowance of the acts of Provincial legislatures, the introduction of bills for raising and expending money, in general all executive administration and the institution and conduct of all important legislation, depends upon the will of a majority of the House of Commons. The number of Senators is limited. So that the resistance of the Senate to the desire of the House of Commons, cannot be overcome by the appointment of new Senators, as that of the House of Lords to the will of the Commons by a creation of Peers.

While, therefore, changes in the executive government and in the administration of that government respond to the popular will as represented by a majority of the House of Commons, in a manner unknown to the United States or to any of our States, if it were desired to declare the independence of Canada or to unite her to any other country, or to make for her a commercial union with any other country, which should give that country large advantages which were denied to Great Britain, the promoters of the plan must not only be able to overcome all the influences of patronage, of attachment to England, of jealousy of other countries, of conservatism, of the interests which bind influential men and strong parties to existing conditions, but they must encounter the legislative power of a Senate whose members are appointed by the crown and hold office for life, and the veto powers expressly reserved by the Act of 1867 to the royal Governor-General and to the Queen in Council. It may be that some method may be devised of forming such political or commercial union other than an act of the British Parliament or a revolution. But it is not yet apparent.

The Queen is commander-in-chief of all the forces, and has the right to determine the seat of government for the Dominion.

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The seats of the several Provincial governments are determined by the executive authority of each.

The Dominion Parliament has also unrestricted authority to make provision for the uniformity of all or any laws relative to civil rights and property, and the procedure in the courts of the various Provinces. But these laws do not go into effect in any Province until adopted by the Legislature thereof.

As originally established in 1867, Canada consisted of Ontario, Quebec, Nova Scotia, and New Brunswick, who were to elect a House of Commons, consisting originally of 181 members, 82 for Ontario, 65 for Quebec, 19 for Nova Scotia, and 15 for New Brunswick, to be enlarged thereafter at the will of the Parliament of Canada, preserving, however, the proportion among those colonies according to population. The members of the House of Commons must possess the same qualifications as would entitle them to sit and vote in a Provincial assembly. The qualifications of voters may be prescribed from time to time by Parliament. The other House of Parliament of Canada consists of a Senate, originally of 72 members, each of whom must dwell in the Province from which he is appointed, must be a natural born subject of the Queen of Great Britain, or naturalized by either of the Provinces of the Union, or by the Parliament after the Union, and must be seized of a freehold worth four thousand dollars over all incumbrances, and must also be worth four thousand dollars above all debt. The person ceasing to have either of these qualifications ceases to be a Senator. The Senate originally consisted of 72 members, 24 each for Ontario and Quebec, and 24 for the maritime Provinces. The Queen may on recommendation of the Governor-General increase the number of Senators, three at a time, the total number not to exceed 78. Since the admission of the new Provinces the number of Senators has been increased to 80.

Sections 91, 92, and 93 of the British North America Act

are inserted here. They provide generally for the distribution of legislative power between the Dominion and the Provinces, and with what has already been said exhibit the general character of the Constitution of Canada :—

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and Good Government of Canada in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say :—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The Raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country, or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.

21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of the Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say:

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices, and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province, and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities and Eleemosynary

Institutions in and for the Province, other than Marine Hospitals.

8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licenses, in order to the raising of a Revenue for Provincial, Local or Municipal Purposes.
10. Local Works and Undertakings, other than such as are of the following Classes,—

a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings, connecting the Province, with any other or others of the Provinces, or extending beyond the Limits of the Province:

b. Lines of Steamships between the Province and any British or Foreign Country:

c. Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.
12. Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any law of the Province made in relation to any Matter coming within any of the Classes of subjects enumerated in this Section.
16. Generally all matters of a merely local or private nature in the Province.

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

(1.) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union;

(2.) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects, shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec;

(3.) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor-General in Council from any Act or decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education;

(4.) In case any such Provincial Law as from Time to Time seems to the Governor-General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor-General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section, and of any Decision of the Governor-General in Council under this Section.

The important particulars, then, in which the institutions of Canada differ from our own—and they are important as showing what things in a constitution established in 1787 have seemed wise to the statesmen of 1867—are these:—

Their system of changing the executive with the changing majority of the House of Commons. Of this a few words will be said presently.

The presence of their Executive in Parliament.

The Government's initiation and control of legislation.

The permanent tenure of their civil service, which does not change with the changes of political power.

The reservation of the power over divorce to the central government. The Senate of the Dominion is the tribunal

of such trials, except in the maritime provinces. In Quebec divorce is not allowed by the Church to Catholics. So from 1869 to 1886 there were but 116 divorces in Canada, to 328,613 in the United States.

The life tenure of the Senate.

The appointment of its members by the Government.

Their property qualification.

The real absence of any considerable weight in legislation from the upper house. This house is always reluctant to make any substantial modification in Government measures.

The general prevalence of the Australian ballot system.

The property qualification for voting and for seats in Parliament.

A Judiciary appointed by the Crown and holding office during good behavior, but dependent upon the Legislature for their salaries.

The jurisdiction in the courts of all cases of contested elections.

The right of impeachment and of trial by the legislature, which James Monroe said is the mainspring of the great machine of government, is unknown to Canada.

Canada has no bill of rights.

No constitution was ever submitted to the people there, except in a single instance in New Brunswick.

Her whole polity is controlled by the one pervading fact that in the last resort the power which governs her is from above and from without, and not from below and from within. The Queen appoints her Governor-General, the Governor-General appoints the Ministry and the Senate. The Ministry initiates all legislation. An appeal lies from her highest court to the Privy Council in England. The British Parliament can at any time overthrow her Constitution at a stroke. All her treaties are made by a power foreign to her. All her legislation is subject to the triple veto power of her Majesty.

It is doubtful, also, whether, under the great control exercised by the central power over the Province, State affection, State pride, State sovereignty, local public spirit, which have had so strong an influence upon us, and to which we owe what is greatest in our history, can ever be engendered there. The executive head of the Province is appointed by the executive of the Dominion. His salary is fixed and provided by the Dominion Parliament. In those Provinces where there are two legislative houses, the members of the upper branch are appointed by the Lieutenant-Governor for life. The Governor-General has an absolute veto over all Provincial legislation. The pardoning power for the Provinces is vested in the Governor-General. It will be seen by the sections of the Act of 1867 which we have cited, how large a share of the legislative power which we leave to the States, especially in the matter of crimes, is exercised in Canada by the Dominion.

But the distinction which Canadian students like specially to insist on between their parliament and ours is that which we have already briefly spoken of—the change in the executive with the changing majority in the House of Commons. Canada has adopted the modern English system, which never has obtained here in the national government or in any State. Indeed, it was not fairly established in England very long before our Constitution was framed. To establish it here would require the complete abrogation of the authority of the President, except so far as he should determine what members of the popular legislative branch were the persons who were entitled to be entrusted with power as best representing its will. It would require, also, the abolition of the legislative function of the President. It would require that the authority of the Senate, both in ordinary legislation and in the treaty-making power (which is but another form of legislation), should be nominal only, or at most should be only sufficient for unimportant amendments to measures proposed by the other House, or to require the other House

occasionally to reconsider its purposes. It would also require elections of members of the House for a long term, and the vesting in the government the power of dissolution and appeal to the people.

A discussion of the comparative advantages of this system and our own is a tempting subject, to which a larger space than can be given to this Report might profitably be devoted. We do not believe that such a form of government would have been practicable during the early period of our history. Nor do we believe that it would be practicable now. It would certainly be rendered very difficult by the great number of important questions which present themselves for solution almost at the same time in the United States, and which will increase with us with the increase of our population and wealth and the variety of our interests. Suppose one party to-day could carry a majority of the House of Representatives on the question of control of national elections, or on the tariff, or the national banking system, or subsidies for foreign commerce, or the question of silver coinage, or the expenditures for rivers and harbors, or reciprocity with Canada, or with South America, and the other party could carry a majority on the rest of these questions or some of them. The Congress which has just adjourned was the first for sixteen years where the Executive and both Houses of Congress were in the power of the same party. It dealt with more than twenty great subjects, the fate of any one of which would have overthrown or established an administration in England. Must we have a new national election every three weeks, whenever one or the other of them had been brought to a vote? We should have, also, if this were attempted, to change the constitutional term of office of the Representative. With all the power and greatness of England, she has as compact a population as one of our great States. Canada has but five millions of inhabitants. Although her territory is nearly as large as ours, her population is much less widely scattered.

Her present system will, it is believed, be found impracticable long before her population equals that of the United States.

Her present system of government has not so far been found wholly satisfactory in its operation. Within twenty years, in spite of the vast aids she has received from England, she has contracted a debt of more than six hundred million dollars. Meantime our mighty magnet has attracted the best of her population to us. Halifax, Quebec and Montreal are but ports of entry for an immigration to the United States. There are probably 1,250,000 Canadians now dwelling in this country.

But we shall have dealt with but half this subject, until the very peculiar relation to Canada of the Province of Quebec, and of the French Catholic population who control that Province, and are spreading into some districts of Ontario and into Northwest Canada, is fully understood. The space in the Proceedings of the Society which may fairly be allotted to this Report forbids us from even entering upon this most attractive topic. Quebec has an area of 258,634 square miles. Deducting 69,946 covered by the inland waters and the Gulf of St. Lawrence, there are still left 188,688 square miles — a territory exceeding that of France by 54,000 square miles — with a population of about 1,500,000, of whom 88 per cent. are Catholics. This population makes up 30 per cent. of all Canada, and sends seventy French members to the Dominion House of Commons. The political control of this body of men is ecclesiastical to an extent far greater than that exercised by the Catholic Church or any other in any country of Europe. What is the aspiration of the churchmen who control Quebec as to its ultimate destiny, it is impossible to say. *La Vérité*, an influential paper in the Province of Quebec, declares that it is the aspiration of the French Canadian people to establish a nation which shall perform on this continent the part France has played so long in Europe, and

shall profess the Catholic faith and speak the French language, and that they never will lose sight of this national destiny. M. Mercier, the premier of Quebec, and in every way the foremost of her public men, is understood to favor annexation to the United States. Meantime the Church keeps her own counsel and maintains unimpaired the influence which she has exerted under all forms of government since the days when Cotton Mather said, "Sir William Phipps had Canada as much written upon his heart as Calais was upon Queen Mary's. He needed not one," continues Mather, "to have been his daily monitor about Canada: it lay down with him, it rose up with him, it engrossed almost all his thoughts."

We must leave a sketch of what may be called the constitutional history of Quebec and a consideration of its relation to the rest of Canada to another paper, if we are to discuss the subject at all.

By the terms of capitulation, signed September 8, 1760, by which Canada passed under British control, Great Britain bound herself to allow the French Canadians the free exercise of their religion. Certain religious fraternities and all communities of *religieux* were guaranteed the possession of their goods, constitutions, and privileges. A similar favor, however, was denied to the Jesuits, until the King should be consulted. A like reservation was made with respect to the tithes of the parochial clergy. By the Treaty of Paris, September 10, 1763, Great Britain bound herself to allow the Canadians the free exercise of their religion. In 1774 the Quebec Act was passed.

This statute is to the French Canadian of Quebec what Magna Charta is to England—a sacred and irrepealable bill of rights. There was bitter hostility to it in Great Britain on the part of the Opposition. It was earnestly denounced as the surrender of the rights of Protestants. With this hostility our ancestors in America deeply sympathized. Undoubtedly the knowledge of this sympathy had

much to do with inducing the Church to give its great influence toward preserving the loyalty of Canada and in defeating the alliance which the insurgent colonies so eagerly desired. Under the Quebec Act the choice of bishops has been left to the Church without interference by the secular power—a liberty which it has never enjoyed in France or in England. The clergy have maintained with great skill their power over Quebec from that day to this. The influence of the parish system of Quebec, its extension into the other provinces of Canada which lie to the westward, its control over the legislation of the Dominion, the effect of its claim for tithes, which constitute the first lien on all the real estate owned by Catholics, the discontent with the rule of the Church introduced by the French Canadians who settle in the United States or go back after a brief sojourn here, the rapid increase of the race under the encouragement given by the Church authorities to early marriages and great families, the docile and thrifty character of the *habitant*—afford a most interesting and profitable field of study, which we cannot enter now.

It is idle to speculate as to the destiny of Canada. The writer has never been one of those who believe that material interest will in the near future bring the people of Canada into a political union with the United States. While the strength of the interests which so incline her is very great, yet they do not seem to be greater in proportion to the resisting power than they have been always in the past. Under her Constitution, as has already been shown, annexation to this country can hardly be accomplished without the consent of Great Britain or without a violent revolution. A conquest of Canada by the United States would be as repugnant to us as to her. She already feels stirring in her veins the spirit of her rising nationality. Her people are coming to feel proud of the extent of her domain, of her vast material resources. They are forgetting the language

of the province, and are learning to speak the language of the empire. She already

> "Rises like the issue of a king;
> And wears upon her baby brow the round
> And top of sovereignty."

We will not undertake to foretell whether the destiny of Canada is to remain, as now, the most important dependency of the British Empire, self-governing in everything but name; or whether she is to form a part of a great confederation of all the English-speaking peoples on the globe; or whether she is to declare her independence, and repeat, with such changes as experience shall suggest to her, our own history; or whether she is to come to us, and share the advantages of our Constitution, and develop the resources of the North American continent in a great partnership with us; or whether, after some fashion that the imagination cannot now suggest, there are to rise on her soil in the future

> "Phantoms of other forms of rule,
> New majesties of mighty states."

But whatever may be her fate, it will be one to which the people of the United States cannot be indifferent.